

1 AN ACT regarding abused and neglected residents of long
2 term care facilities.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 5. The Abused and Neglected Long Term Care
6 Facility Residents Reporting Act is amended by changing
7 Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8 as follows:

8 (210 ILCS 30/6.2) (from Ch. 111 1/2, par. 4166.2)

9 (Section scheduled to be repealed on January 1, 2002)

10 Sec. 6.2. Inspector General.

11 (a) The Governor shall appoint, and the Senate shall
12 confirm, an Inspector General who shall function within the
13 Department of Human Services and report to the Secretary of
14 Human Services and the Governor. The Inspector General shall
15 investigate reports of suspected abuse or neglect (as those
16 terms are defined in Section 3 of this Act) of patients or
17 residents in any mental health or developmental disabilities
18 facility operated by the Department of Human Services and
19 shall have authority to investigate and take immediate action
20 on reports of abuse or neglect of recipients, whether
21 patients or residents, in any mental health or developmental
22 disabilities facility or program that is licensed or
23 certified by the Department of Human Services (as successor
24 to the Department of Mental Health and Developmental
25 Disabilities) or that is funded by the Department of Human
26 Services (as successor to the Department of Mental Health and
27 Developmental Disabilities) and is not licensed or certified
28 by any agency of the State. At the specific, written request
29 of an agency of the State other than the Department of Human
30 Services (as successor to the Department of Mental Health and
31 Developmental Disabilities), the Inspector General may

1 cooperate in investigating reports of abuse and neglect of
2 persons with mental illness or persons with developmental
3 disabilities. The Inspector General shall have no
4 supervision over or involvement in routine, programmatic,
5 licensure, or certification operations of the Department of
6 Human Services or any of its funded agencies.

7 The Inspector General shall promulgate rules establishing
8 minimum requirements for reporting allegations of abuse and
9 neglect and initiating, conducting, and completing
10 investigations. The promulgated rules shall clearly set
11 forth that in instances where 2 or more State agencies could
12 investigate an allegation of abuse or neglect, the Inspector
13 General shall not conduct an investigation that is redundant
14 to an investigation conducted by another State agency. The
15 rules shall establish criteria for determining, based upon
16 the nature of the allegation, the appropriate method of
17 investigation, which may include, but need not be limited to,
18 site visits, telephone contacts, or requests for written
19 responses from agencies. The rules shall also clarify how
20 the Office of the Inspector General shall interact with the
21 licensing unit of the Department of Human Services in
22 investigations of allegations of abuse or neglect. Any
23 allegations or investigations of reports made pursuant to
24 this Act shall remain confidential until a final report is
25 completed. The resident or patient who allegedly was abused
26 or neglected and his or her legal guardian shall be informed
27 by the facility or agency of the report of alleged abuse or
28 neglect. Final reports regarding unsubstantiated or unfounded
29 allegations shall remain confidential, except that final
30 reports may be disclosed pursuant to Section 6 of this Act.

31 The Inspector General shall be appointed for a term of 4
32 years.

33 (b) The Inspector General shall within 24 hours after
34 receiving a report of suspected abuse or neglect determine

1 whether the evidence indicates that any possible criminal act
2 has been committed. If he determines that a possible criminal
3 act has been committed, or that special expertise is required
4 in the investigation, he shall immediately notify the
5 Department of State Police. The Department of State Police
6 shall investigate any report indicating a possible murder,
7 rape, or other felony. All investigations conducted by the
8 Inspector General shall be conducted in a manner designed to
9 ensure the preservation of evidence for possible use in a
10 criminal prosecution.

11 (b-5) The Inspector General shall make a determination
12 to accept or reject a preliminary report of the investigation
13 of alleged abuse or neglect based on established
14 investigative procedures. The facility or agency may request
15 clarification or reconsideration based on additional
16 information. For cases where the allegation of abuse or
17 neglect is substantiated, the Inspector General shall require
18 the facility or agency to submit a written response. The
19 written response from a facility or agency shall address in a
20 concise and reasoned manner the actions that the agency or
21 facility will take or has taken to protect the resident or
22 patient from abuse or neglect, prevent reoccurrences, and
23 eliminate problems identified and shall include
24 implementation and completion dates for all such action.

25 (c) The Inspector General shall, within 10 calendar days
26 after the transmittal date of a completed investigation where
27 abuse or neglect is substantiated or administrative action is
28 recommended, provide a complete report on the case to the
29 Secretary of Human Services and to the agency in which the
30 abuse or neglect is alleged to have happened. The complete
31 report shall include a written response from the agency or
32 facility operated by the State to the Inspector General that
33 addresses in a concise and reasoned manner the actions that
34 the agency or facility will take or has taken to protect the

1 resident or patient from abuse or neglect, prevent
2 reoccurrences, and eliminate problems identified and shall
3 include implementation and completion dates for all such
4 action. The Secretary of Human Services shall accept or
5 reject the response and establish how the Department will
6 determine whether the facility or program followed the
7 approved response. The Secretary may require Department
8 personnel to visit the facility or agency for training,
9 technical assistance, programmatic, licensure, or
10 certification purposes. Administrative action, including
11 sanctions, may be applied should the Secretary reject the
12 response or should the facility or agency fail to follow the
13 approved response. The facility or agency shall inform the
14 resident or patient and the legal guardian whether the
15 reported allegation was substantiated, unsubstantiated, or
16 unfounded. There shall be an appeals process for any person
17 or agency that is subject to any action based on a
18 recommendation or recommendations.

19 (d) The Inspector General may recommend to the
20 Departments of Public Health and Human Services sanctions to
21 be imposed against mental health and developmental
22 disabilities facilities under the jurisdiction of the
23 Department of Human Services for the protection of residents,
24 including appointment of on-site monitors or receivers,
25 transfer or relocation of residents, and closure of units.
26 The Inspector General may seek the assistance of the Attorney
27 General or any of the several State's attorneys in imposing
28 such sanctions.

29 (e) The Inspector General shall establish and conduct
30 periodic training programs for Department employees
31 concerning the prevention and reporting of neglect and abuse.

32 (f) The Inspector General shall at all times be granted
33 access to any mental health or developmental disabilities
34 facility operated by the Department, shall establish and

1 conduct unannounced site visits to those facilities at least
2 once annually, and shall be granted access, for the purpose
3 of investigating a report of abuse or neglect, to any
4 facility or program funded by the Department that is subject
5 under the provisions of this Section to investigation by the
6 Inspector General for a report of abuse or neglect.

7 (g) Nothing in this Section shall limit investigations
8 by the Department of Human Services that may otherwise be
9 required by law or that may be necessary in that Department's
10 capacity as the central administrative authority responsible
11 for the operation of State mental health and developmental
12 disability facilities.

13 (h) This Section is repealed on January 1, 2004 2002.

14 (Source: P.A. 90-252, eff. 7-29-97; 90-512, eff. 8-22-97;
15 90-655, eff. 7-30-98; 91-169, eff. 7-16-99.)

16 (210 ILCS 30/6.3) (from Ch. 111 1/2, par. 4166.3)

17 (Section scheduled to be repealed on January 1, 2002)

18 Sec. 6.3. Quality Care Board. There is created, within
19 the Department of Human Services' Office of the Inspector
20 General, a Quality Care Board to be composed of 7 members
21 appointed by the Governor with the advice and consent of the
22 Senate. One of the members shall be designated as chairman
23 by the Governor. Of the initial appointments made by the
24 Governor, 4 Board members shall each be appointed for a term
25 of 4 years and 3 members shall each be appointed for a term
26 of 2 years. Upon the expiration of each member's term, a
27 successor shall be appointed for a term of 4 years. In the
28 case of a vacancy in the office of any member, the Governor
29 shall appoint a successor for the remainder of the unexpired
30 term.

31 Members appointed by the Governor shall be qualified by
32 professional knowledge or experience in the area of law,
33 investigatory techniques, or in the area of care of the

1 mentally ill or developmentally disabled. Two members
2 appointed by the Governor shall be persons with a disability
3 or a parent of a person with a disability. Members shall
4 serve without compensation, but shall be reimbursed for
5 expenses incurred in connection with the performance of their
6 duties as members.

7 The Board shall meet quarterly, and may hold other
8 meetings on the call of the chairman. Four members shall
9 constitute a quorum. The Board may adopt rules and
10 regulations it deems necessary to govern its own procedures.

11 This Section is repealed on January 1, 2004 2002.

12 (Source: P.A. 91-169, eff. 7-16-99.)

13 (210 ILCS 30/6.4) (from Ch. 111 1/2, par. 4166.4)

14 (Section scheduled to be repealed on January 1, 2002)

15 Sec. 6.4. Scope and function of the Quality Care Board.
16 The Board shall monitor and oversee the operations, policies,
17 and procedures of the Inspector General to assure the prompt
18 and thorough investigation of allegations of neglect and
19 abuse. In fulfilling these responsibilities, the Board may
20 do the following:

21 (1) Provide independent, expert consultation to the
22 Inspector General on policies and protocols for
23 investigations of alleged neglect and abuse.

24 (2) Review existing regulations relating to the
25 operation of facilities under the control of the
26 Department.

27 (3) Advise the Inspector General as to the content
28 of training activities authorized under Section 6.2.

29 (4) Recommend policies concerning methods for
30 improving the intergovernmental relationships between the
31 office of the Inspector General and other State or
32 federal agencies.

33 This Section is repealed on January 1, 2004 2002.

1 (Source: P.A. 91-169, eff. 7-16-99.)

2 (210 ILCS 30/6.5) (from Ch. 111 1/2, par. 4166.5)

3 (Section scheduled to be repealed on January 1, 2002)

4 Sec. 6.5. Investigators. Within 60 days after the
 5 effective date of this amendatory Act of 1992, the Inspector
 6 General shall establish a comprehensive program to ensure
 7 that every person employed or newly hired to conduct
 8 investigations shall receive training on an on-going basis
 9 concerning investigative techniques, communication skills,
 10 and the appropriate means of contact with persons admitted or
 11 committed to the mental health or developmental disabilities
 12 facilities under the jurisdiction of the Department of Human
 13 Services.

14 This Section is repealed on January 1, 2004 2002.

15 (Source: P.A. 91-169, eff. 7-16-99.)

16 (210 ILCS 30/6.6) (from Ch. 111 1/2, par. 4166.6)

17 (Section scheduled to be repealed on January 1, 2002)

18 Sec. 6.6. Subpoenas; testimony; penalty. The Inspector
 19 General shall have the power to subpoena witnesses and compel
 20 the production of books and papers pertinent to an
 21 investigation authorized by this Act, provided that the power
 22 to subpoena or to compel the production of books and papers
 23 shall not extend to the person or documents of a labor
 24 organization or its representatives insofar as the person or
 25 documents of a labor organization relate to the function of
 26 representing an employee subject to investigation under this
 27 Act. Mental health records of patients shall be confidential
 28 as provided under the Mental Health and Developmental
 29 Disabilities Confidentiality Act. Any person who fails to
 30 appear in response to a subpoena or to answer any question or
 31 produce any books or papers pertinent to an investigation
 32 under this Act, except as otherwise provided in this Section,

1 or who knowingly gives false testimony in relation to an
2 investigation under this Act is guilty of a Class A
3 misdemeanor.

4 This Section is repealed on January 1, 2004 2002.

5 (Source: P.A. 91-169, eff. 7-16-99.)

6 (210 ILCS 30/6.7) (from Ch. 111 1/2, par. 4166.7)

7 (Section scheduled to be repealed on January 1, 2002)

8 Sec. 6.7. Annual report. The Inspector General shall
9 provide to the General Assembly and the Governor, no later
10 than January 1 of each year, a summary of reports and
11 investigations made under this Act for the prior fiscal year
12 with respect to residents of institutions under the
13 jurisdiction of the Department. The report shall detail the
14 imposition of sanctions and the final disposition of those
15 recommendations. The summaries shall not contain any
16 confidential or identifying information concerning the
17 subjects of the reports and investigations. The report shall
18 also include a trend analysis of the number of reported
19 allegations and their disposition, for each facility and
20 Department-wide, for the most recent 3-year time period and a
21 statement, for each facility, of the staffing-to-patient
22 ratios. The ratios shall include only the number of direct
23 care staff. The report shall also include detailed
24 recommended administrative actions and matters for
25 consideration by the General Assembly.

26 This Section is repealed on January 1, 2004 2002.

27 (Source: P.A. 91-169, eff. 7-16-99.)

28 (210 ILCS 30/6.8) (from Ch. 111 1/2, par. 4166.8)

29 (Section scheduled to be repealed on January 1, 2002)

30 Sec. 6.8. Program audit. The Auditor General shall
31 conduct a biennial program audit of the office of the
32 Inspector General in relation to the Inspector General's

1 compliance with this Act. The audit shall specifically
2 include the Inspector General's effectiveness in
3 investigating reports of alleged neglect or abuse of
4 residents in any facility operated by the Department and in
5 making recommendations for sanctions to the Departments of
6 Human Services and Public Health. The Auditor General shall
7 conduct the program audit according to the provisions of the
8 Illinois State Auditing Act and shall report its findings to
9 the General Assembly no later than January 1 of each
10 odd-numbered year.

11 This Section is repealed on January 1, 2004 2002.

12 (Source: P.A. 91-169, eff. 7-16-99.).

13 Section 10. The Mental Health and Developmental
14 Disabilities Confidentiality Act is amended by changing
15 Section 10 as follows:

16 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

17 Sec. 10. (a) Except as provided herein, in any civil,
18 criminal, administrative, or legislative proceeding, or in
19 any proceeding preliminary thereto, a recipient, and a
20 therapist on behalf and in the interest of a recipient, has
21 the privilege to refuse to disclose and to prevent the
22 disclosure of the recipient's record or communications.

23 (1) Records and communications may be disclosed in
24 a civil, criminal or administrative proceeding in which
25 the recipient introduces his mental condition or any
26 aspect of his services received for such condition as an
27 element of his claim or defense, if and only to the
28 extent the court in which the proceedings have been
29 brought, or, in the case of an administrative proceeding,
30 the court to which an appeal or other action for review
31 of an administrative determination may be taken, finds,
32 after in camera examination of testimony or other

1 evidence, that it is relevant, probative, not unduly
2 prejudicial or inflammatory, and otherwise clearly
3 admissible; that other satisfactory evidence is
4 demonstrably unsatisfactory as evidence of the facts
5 sought to be established by such evidence; and that
6 disclosure is more important to the interests of
7 substantial justice than protection from injury to the
8 therapist-recipient relationship or to the recipient or
9 other whom disclosure is likely to harm. Except in a
10 criminal proceeding in which the recipient, who is
11 accused in that proceeding, raises the defense of
12 insanity, no record or communication between a therapist
13 and a recipient shall be deemed relevant for purposes of
14 this subsection, except the fact of treatment, the cost
15 of services and the ultimate diagnosis unless the party
16 seeking disclosure of the communication clearly
17 establishes in the trial court a compelling need for its
18 production. However, for purposes of this Act, in any
19 action brought or defended under the Illinois Marriage
20 and Dissolution of Marriage Act, or in any action in
21 which pain and suffering is an element of the claim,
22 mental condition shall not be deemed to be introduced
23 merely by making such claim and shall be deemed to be
24 introduced only if the recipient or a witness on his
25 behalf first testifies concerning the record or
26 communication.

27 (2) Records or communications may be disclosed in a
28 civil proceeding after the recipient's death when the
29 recipient's physical or mental condition has been
30 introduced as an element of a claim or defense by any
31 party claiming or defending through or as a beneficiary
32 of the recipient, provided the court finds, after in
33 camera examination of the evidence, that it is relevant,
34 probative, and otherwise clearly admissible; that other

1 satisfactory evidence is not available regarding the
2 facts sought to be established by such evidence; and that
3 disclosure is more important to the interests of
4 substantial justice than protection from any injury which
5 disclosure is likely to cause.

6 (3) In the event of a claim made or an action filed
7 by a recipient, or, following the recipient's death, by
8 any party claiming as a beneficiary of the recipient for
9 injury caused in the course of providing services to such
10 recipient, the therapist and other persons whose actions
11 are alleged to have been the cause of injury may disclose
12 pertinent records and communications to an attorney or
13 attorneys engaged to render advice about and to provide
14 representation in connection with such matter and to
15 persons working under the supervision of such attorney or
16 attorneys, and may testify as to such records or
17 communication in any administrative, judicial or
18 discovery proceeding for the purpose of preparing and
19 presenting a defense against such claim or action.

20 (4) Records and communications made to or by a
21 therapist in the course of examination ordered by a court
22 for good cause shown may, if otherwise relevant and
23 admissible, be disclosed in a civil, criminal, or
24 administrative proceeding in which the recipient is a
25 party or in appropriate pretrial proceedings, provided
26 such court has found that the recipient has been as
27 adequately and as effectively as possible informed before
28 submitting to such examination that such records and
29 communications would not be considered confidential or
30 privileged. Such records and communications shall be
31 admissible only as to issues involving the recipient's
32 physical or mental condition and only to the extent that
33 these are germane to such proceedings.

34 (5) Records and communications may be disclosed in

1 a proceeding under the Probate Act of 1975, to determine
2 a recipient's competency or need for guardianship,
3 provided that the disclosure is made only with respect to
4 that issue.

5 (6) Records and communications may be disclosed
6 when such are made during treatment which the recipient
7 is ordered to undergo to render him fit to stand trial on
8 a criminal charge, provided that the disclosure is made
9 only with respect to the issue of fitness to stand trial.

10 (7) Records and communications of the recipient may
11 be disclosed in any civil or administrative proceeding
12 involving the validity of or benefits under a life,
13 accident, health or disability insurance policy or
14 certificate, or Health Care Service Plan Contract,
15 insuring the recipient, but only if and to the extent
16 that the recipient's mental condition, or treatment or
17 services in connection therewith, is a material element
18 of any claim or defense of any party, provided that
19 information sought or disclosed shall not be redisclosed
20 except in connection with the proceeding in which
21 disclosure is made.

22 (8) Records or communications may be disclosed when
23 such are relevant to a matter in issue in any action
24 brought under this Act and proceedings preliminary
25 thereto, provided that any information so disclosed shall
26 not be utilized for any other purpose nor be redisclosed
27 except in connection with such action or preliminary
28 proceedings.

29 (9) Records and communications of the recipient may
30 be disclosed in investigations of and trials for homicide
31 when the disclosure relates directly to the fact or
32 immediate circumstances of the homicide.

33 (10) Records and communications of a deceased
34 recipient may be disclosed to a coroner conducting a

1 preliminary investigation into the recipient's death
2 under Section 3-3013 of the Counties Code. However,
3 records and communications of the deceased recipient
4 disclosed in an investigation shall be limited solely to
5 the deceased recipient's records and communications
6 relating to the factual circumstances of the incident
7 being investigated in a mental health facility.

8 (11) Records and communications of a recipient
9 shall be disclosed in a proceeding where a petition or
10 motion is filed under the Juvenile Court Act of 1987 and
11 the recipient is named as a parent, guardian, or legal
12 custodian of a minor who is the subject of a petition for
13 wardship as described in Section 2-3 of that Act or a
14 minor who is the subject of a petition for wardship as
15 described in Section 2-4 of that Act alleging the minor
16 is abused, neglected, or dependent or the recipient is
17 named as a parent of a child who is the subject of a
18 petition, supplemental petition, or motion to appoint a
19 guardian with the power to consent to adoption under
20 Section 2-29 of the Juvenile Court Act of 1987.

21 (b) Before a disclosure is made under subsection (a),
22 any party to the proceeding or any other interested person
23 may request an in camera review of the record or
24 communications to be disclosed. The court or agency
25 conducting the proceeding may hold an in camera review on its
26 own motion. When, contrary to the express wish of the
27 recipient, the therapist asserts a privilege on behalf and in
28 the interest of a recipient, the court may require that the
29 therapist, in an in camera hearing, establish that disclosure
30 is not in the best interest of the recipient. The court or
31 agency may prevent disclosure or limit disclosure to the
32 extent that other admissible evidence is sufficient to
33 establish the facts in issue. The court or agency may enter
34 such orders as may be necessary in order to protect the

1 confidentiality, privacy, and safety of the recipient or of
2 other persons. Any order to disclose or to not disclose
3 shall be considered a final order for purposes of appeal and
4 shall be subject to interlocutory appeal.

5 (c) A recipient's records and communications may be
6 disclosed to a duly authorized committee, commission or
7 subcommittee of the General Assembly which possesses subpoena
8 and hearing powers, upon a written request approved by a
9 majority vote of the committee, commission or subcommittee
10 members. The committee, commission or subcommittee may
11 request records only for the purposes of investigating or
12 studying possible violations of recipient rights. The
13 request shall state the purpose for which disclosure is
14 sought.

15 The facility shall notify the recipient, or his guardian,
16 and therapist in writing of any disclosure request under this
17 subsection within 5 business days after such request. Such
18 notification shall also inform the recipient, or guardian,
19 and therapist of their right to object to the disclosure
20 within 10 business days after receipt of the notification and
21 shall include the name, address and telephone number of the
22 committee, commission or subcommittee member or staff person
23 with whom an objection shall be filed. If no objection has
24 been filed within 15 business days after the request for
25 disclosure, the facility shall disclose the records and
26 communications to the committee, commission or subcommittee.
27 If an objection has been filed within 15 business days after
28 the request for disclosure, the facility shall disclose the
29 records and communications only after the committee,
30 commission or subcommittee has permitted the recipient,
31 guardian or therapist to present his objection in person
32 before it and has renewed its request for disclosure by a
33 majority vote of its members.

34 Disclosure under this subsection shall not occur until

1 all personally identifiable data of the recipient and
2 provider are removed from the records and communications.
3 Disclosure under this subsection shall not occur in any
4 public proceeding.

5 (d) No party to any proceeding described under
6 paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a)
7 of this Section, nor his or her attorney, shall serve a
8 subpoena seeking to obtain access to records or
9 communications under this Act unless the subpoena is
10 accompanied by a written order issued by a judge, authorizing
11 the disclosure of the records or the issuance of the
12 subpoena. No person shall comply with a subpoena for records
13 or communications under this Act, unless the subpoena is
14 accompanied by a written order authorizing the issuance of
15 the subpoena or the disclosure of the records.

16 (e) When a person has been transported by a peace
17 officer to a mental health facility, then upon the request of
18 a peace officer, if the person is allowed to leave the mental
19 health facility within 48 hours of arrival, excluding
20 Saturdays, Sundays, and holidays, the facility director shall
21 notify the local law enforcement authority prior to the
22 release of the person. The local law enforcement authority
23 may re-disclose the information as necessary to alert the
24 appropriate enforcement or prosecuting authority.

25 (f) A recipient's records and communications shall be
26 disclosed to the Inspector General of the Department of Human
27 Services within 10 business days of a request by the
28 Inspector General in the course of an investigation
29 authorized by the Abused and Neglected Long Term Care
30 Facility Residents Reporting Act and applicable rule. The
31 request shall be in writing and signed by the Inspector
32 General or his or her designee. The request shall state the
33 purpose for which disclosure is sought. Any person who
34 knowingly and willfully refuses to comply with such a request

1 is guilty of a Class A misdemeanor.

2 (Source: P.A. 90-608, eff. 6-30-98; 91-726, eff. 6-2-00.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.